D.B.CIVIL SPECIAL APPEAL NO. 125/2007
Jhamman Lal v. State of Rajasthan & ors.

Date of order : 09.02.2007.

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

. . .

Shri D.D.Khandelwal, for the appellant

This special appeal is directed against the order of the learned Single Judge dismissing the writ petition of the appellant. The appellant had filed the writ petition challenging the order of the Assistant Registrar, Co-operative Societies under section 74 of the Rajasthan Co-operative Societies Act, 1965 as also the appellate and revisional orders arising therefrom.

Section 74 of the Act provides that if in the course of an audit, inquiry, inspection etc. of a co-operative society it is found that any person, who has taken any part in the organisation or management of such society or who is or has at any time been an officer or an employee of the society, among other things, caused deficiency in the assets of the society by breach of trust or willful negligence or misappropriated or fraudulently retained any money or other property of the society, the Registrar may of his own motion or on the application of the committee, liquidator or any

creditor, inquire himself or direct any person authorised by him to inquire into the conduct of such person.

In the instant case the audit of accounts of the Wazirpur Gram Sewa Sahakari Samiti Ltd. for the year 1997-98 revealed embezzlement/misutilisation of money. On receipt of the audit report, a proceeding under section 74 being case no. 7/99 was initiated by the Assistant Registrar, Co-operative Societies, Sawaimadhopur exercising power of the Registrar, and one Shiv Dutt Sharma, Inspector, Co-operative Society, Gangapur City appointed as the enquiry officer. The enquiry officer found conduct of the appellant, who was manager of the society at the relevant time, suspicious with respect to four items totalling Rs. 14,492/-. On receipt of the enquiry report notice was issued to the appellant under section 74(2). Pursuant to notice the appellant appeared. He stated that the enquiry had been held behind his back. In view of the complaint, the record was called for and the matter was examined by the Assistant Registrar in presence of the appellant. It transpired that sum of Rs. 14,402/- was unaccounted. The appellant was found to have misappropriated the amount. The appellant challenged the decision of the Assistant Registrar before the Additional Registrar in appeal no. 30/2002 which was dismissed. He then approached Minister incharge Co-operatives in

revision which too was dismissed.

Counsel attempted to find fault with the findings of the Assistant Registrar but from a reading of the order it is manifest that findings were arrived at on the basis of entries in the relevant registers. For instance, it was found that while carrying forward the balance on 29.5.1997, instead of Rs. 44,559/- the appellant mentioned the figure Rs. 40,559/- and thus caused deficiency in the accounts to the tune of Rs. 4,000/-. Similarly, while carrying forward the balance on 9.6.1997 he caused deficiency of sum of Rs. 7,762/-. In this manner the appellant was found to have caused deficiency in the accounts. He was thus held guilty of misappropriation and fraudulent detention of money of the society. These are findings of fact which can not be set aside in writ jurisdiction. We are of the view that the dispute is concluded by concurrent findings of fact by three authorities and the learned Single Judge did not commit any error in dismissing the writ petition.

The appeal is dismissed.

(MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.

mathur/